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EXAMINER

HYLTON, R

ART UNIT

PAPER NUMBER

3727

3

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/277,918**

Applicant(s)

Bearce

Examiner

Robin A. Hylton

Group Art Unit

3727



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-40 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 27-31 is/are allowed.

☒ Claim(s) 1-10, 13-20, 23-26, 32, 33, 35-38, and 40 is/are rejected.

☒ Claim(s) 11, 12, 21, 22, 34, and 39 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Mar 29, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892 ✓

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 ✓

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948 ✓

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3727

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the groove on the second surface of the disc wherein when the cap is threaded onto the bottle neck, the groove extends radially beyond the rim of the bottle neck (claim 32), the combination of bottle, the cap and disc having a circular ridge and a slot formed thereacross (claim 27) and the combination of bottle, the cap and disc having a circular ridge and a slot formed thereacross and a hole through the disc (claim 30) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the groove on the second surface of the disc wherein when the cap is threaded onto the bottle neck, the groove extends radially beyond the rim of the bottle neck as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).  
Correction is required.

3. The drawings are objected to because the lead lines for reference characters 46 and 344 have been reversed in figure 10. Correction is required.

#### 4. **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

##### **a. Correction of Informalities -- 37 CFR 1.85; 1097 O.G. 36**

New formal drawings must be filed with the changes incorporated therein. The art unit number, application number (including series code) and number of drawing sheets should be written on the reverse side of the drawings. Applicant may delay filing of the new drawings until receipt of the "Notice of Allowability" (PTOL-37 or PTO-37). If delayed, the new drawings **MUST** be filed

Art Unit: 3727

within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability" to avoid extension of time fees. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a) for filing the corrected drawings (but not for payment of the issue fee). The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**b. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the three month shortened statutory period set in the "Notice of Allowability" (PTO-37). Within that three month period, two weeks should be allowed for review of the new drawings by the Office. If a correction is determined to be unacceptable by the Office, applicant must arrange to have an acceptable correction re-submitted within the original three month period to avoid the necessity of obtaining an extension of time with extension fees. Therefore, applicant should file corrected drawings as soon as possible.

Failure to take corrective action within the set (or extended) period will result in **ABANDONMENT** of the application.

***Specification***

5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Art Unit: 3727

***Claim Rejections - 35 USC § 112***

6. Claims 2-8,15-18,36,38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claims thereby making the scope of the claims unclear. For instance, in claim 37, the preamble sets forth the disc as the claimed structure. Yet in claim 38, additional structure and structural relationships are set forth between the disc and the bottle. (Also see claims 1 and 2). The applicant is required to clarify what the claims are intended to be drawn to, i.e., either the cap (or disc) alone or the combination of the cap and the bottle. The applicant is also required to make the language of the claims consistent with his intent. For the purpose of examination, the claims are considered to be drawn to the cap (or disc) only.

In claim 15, line 7, -- the -- or -- an -- should be inserted before "outer surface" and one occurrence of "of the" should be deleted so that the claim is a complete sentence.

In claim 36, line 7, one of the terms -- the -- or -- an -- should be inserted before "outer surface" so that the claim is a complete sentence.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Art Unit: 3727

8. Claims 1,2,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoge (US 2,162,455). Hoge discloses a bottle cap comprising a top portion (15) having an inner surface, an annular wall (16) having threads on an inner surface for engaging threads of an associated container neck extending from the top portion, a circular ridge formed on the top portion inner surface, at least a slot (21) formed across the ridge, and a liner (13) having an opening (14) through its thickness fitted over the top portion inner surface (see the outermost edges of the liner in figure 1).

9. Claims 9,10,19,20,25,26 are rejected under 35 U.S.C. 102(e) as being anticipated by Montgomery (US 5,785,196). Montgomery discloses a bottle having a threaded neck and a bottle cap comprising a top portion (24) having an inner surface, an annular wall (26) extending from the top portion and having threads on an inner surface for engaging the threads of the container neck, and a plurality of grooves formed on the top portion inner surface. The method of venting gases is inherently set forth in the use of the disclosed bottle and cap assembly.

10. Claims 19,20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boyd (US 4,190,170).

11. Claims 37,38,40 are rejected under 35 U.S.C. 102(b) as being anticipated by Gora (US 2,739,724). Gora discloses a bottle cap comprising a top portion (10) having an inner surface, an annular wall (12) extending from the top portion and a disc comprising a circular ridge (28) formed on a first surface thereof and a slot (29) formed across the ridge, said disc made from a semi-hard material.

With respect to claim 38, the claim, as set forth in the preamble, is drawn to the bottle cap disc. The structural relationship between the cap disc and the bottle neck rim is therefore not given patentable weight.

12. Claims 37,40 are rejected under 35 U.S.C. 102(b) as being anticipated by Carpenter, Jr. (US 3,589,545). Carpenter, Jr. discloses a bottle cap comprising a top portion (26) having an inner surface, an

Art Unit: 3727

annular wall (28) having threads on an inner surface for engaging threads of an associated container neck extending from the top portion and a disc comprising a circular ridge (46) formed on a first surface thereof and a slot (seen in figure 3) formed across the ridge, said disc made from a semi-hard material.

13. Claims 1,2,15,23,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Brownbill (US 4,598,835). Brownbill discloses a bottle having a threaded neck and a bottle cap comprising a top portion (10) having an inner surface, an annular wall (11) extending from the top portion and having threads (14) on an inner surface for engaging the threads of the container neck, and a circular ridge (17) formed on the top portion inner surface, at least a slot (51) formed across the ridge. The method of venting gases is inherently set forth in the use of the disclosed bottle and cap assembly.

14. Claims 1,2 are rejected under 35 U.S.C. 102(e) as being anticipated by Pfefferkorn et al. (US 5,803,286). Hoge discloses a bottle cap comprising a top portion (2) having an inner surface (3), an annular wall (1) and having threads on an inner surface for engaging threads of an associated container neck extending from the top portion, and a circular ridge (4) formed on the top portion inner surface having at least a slot (9) formed across the ridge.

15. Claims 1,2 are rejected under 35 U.S.C. 102(b) as being anticipated by Doi (US 4,880,127). Doi discloses a bottle cap comprising a top portion (3) having an inner surface, an annular wall (4) having threads (6) on an inner surface for engaging threads of an associated container neck extending from the top portion, and a circular ridge (30) formed on the top portion inner surface having at least a slot (31) formed across the ridge.

16. Claims 32,33,35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tagalakakis et al. (US 4,121,728). See the embodiment depicted in figure 4.

Art Unit: 3727

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brownbill in view of Dubach (5,257,708). Brownbill discloses the claimed cap except for the hinged top portion. Dubach discloses a cap comprising a hinged top portion. It would have been obvious to one of ordinary skill in the art to modify the cap of Brownbill in view of Dubach to provide a hinged top portion to allow dispensing of a product without complete removal of the cap from an associated bottle neck.

19. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peters et al. (US 5,542,585)(hereinafter Peters) in view of Pfefferkorn. Peters discloses the claimed cap except for at least a slot being formed across the ridge. Pfefferkorn discloses a cap comprising a circular ridge depending from the top wall, said ridge having at least a slot formed thereacross. It would have been obvious to one of ordinary skill in the art to provide at least a slot across the circular ridge to allow venting between the cap and an associated bottle with the cap in an applied position.

20. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery in view of Dubach. Montgomery discloses the claimed cap except for the hinge coupling the top portion to the annular wall. Dubach discloses a cap comprising a top portion hingedly coupled to the annular wall. It would have been obvious to one of ordinary skill in the art to modify the cap of Montgomery in view of Dubach to hingedly couple the top portion to the annular wall as an alternative arrangement for dispensing the container contents without complete removal of the cap from the associated container.



Art Unit: 3727

21. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Montgomery. Peters discloses the claimed cap except for the venting groove formed on the inner surface of the top portion. Montgomery discloses a cap comprising a groove formed on the inner surface of the top portion. It would have been obvious to one of ordinary skill in the art to provide a groove formed on the inner surface of the top portion to allow venting between the cap and an associated bottle with the cap in an applied position.

***Allowable Subject Matter***

22. Claims 11,12,21,22,34,39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

23. Claims 3-5,16-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

24. Claim 36 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

25. Claims 27-31 are allowable over the art of record.

***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who

Art Unit: 3727


authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:30 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah  
February 10, 2000



Stephen K. Cronin  
Primary Examiner